

<b>CITY OF WOLVERHAMPTON COUNCIL</b>	<b>Cabinet</b> <b>25 April 2018</b>
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<b>Report title</b>	<b>No Recourse to Public Funds</b>	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor Val Gibson Children and Young People	
<b>Corporate Plan priority</b>	People - Stronger Communities	
<b>Key decision</b>	Yes	
<b>In forward plan</b>	Yes	
<b>Wards affected</b>	All Wards	
<b>Accountable Director</b>	Emma Bennett, Director of Children's Services	
<b>Originating service</b>	Children and Young People	
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<b>Report to be/has been considered by</b>	People Leadership Team	13 November 2017
	Strategic Executive Board	16 January 2018
	Executive Team	20 February 2018

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### Recommendations for decision:

The Cabinet is recommended to:

1. Approve the policy and procedure regarding the support to be provided to families and adults with no recourse to public funds.
2. Approve the financial support provided to families and adults with no recourse to public fund to ensure that statutory responsibilities are met.

## **1.0 Purpose**

- 1.1 The purpose of this report is to outline the proposed policy for the management of families and adults with No Recourse to Public Funds (NRPF) including the financial support we will provide.
- 1.2 No recourse to public funds applies to migrants who are 'subject to immigration control' and as a result of this have no entitlement to certain welfare benefits, local authority housing and homelessness assistance.

## **2.0 Background**

- 2.1 Recently there has been an increase in families with NRPF who are being relocated outside of the London area due to the cost of privately rented accommodation.
- 2.2 In the City of Wolverhampton, on average one family per week are presenting themselves to Children Service's for support. We are currently supporting 51 NRPF families. The only legal recourse to support these families is defined by the Children Act 1989 as Children In Need. Therefore, daily subsistence and rent is being provided by the Section 17 (Children Act 1989) budget.
- 2.3 Currently Children's Services do not have any operational procedures for dealing with families with NRPF. Owing to this the level of financial support provided is inconsistent across each locality area within the city.
- 2.4 This is posing considerable demands on budgets which cannot be sustained at the current level.
- 2.5 Adult Services utilise the national NRPF network practice guidance and have small numbers of adults with NRPF that they support financially.
- 2.6 A pilot is currently taking place with the Refuge and Migrant Centre to try and see if their support and expertise can speed up the immigration process for families with NRPF, which in turn, would reduce the timescales for support including financial support being provided by the local authority.
- 2.7 Owing to a recent serious case review in relation to a family with NRPF a multi-agency forum has been established, led by Public Health, to develop a city-wide approach to supporting NRPF adults and families. The City of Wolverhampton Council will be involved in this to ensure it is consistent with our local authority operational Policy.

## **3.0 National picture**

- 3.1 The Local Authority regularly faces threats of Judicial Review in respect of multiple issues that all stem from the same issue: the parents of children who are NRPF are not having their immigration status determined in a timely manner.

- 3.2 The Local Authority is challenged when it is deemed to not have provided support to prevent destitution. These are usually resolved in correspondence and by providing support. Alternatively, without prejudice support is offered whilst further assessments/investigations are undertaken.
- 3.3 In the case of *PO-v-London-Borough-of-Newham* the local authority's policy was found to be unlawful. The case related to about the level of financial assistance that the Defendant, the Council of the London Borough of Newham, provided under section 17 of the Children Act 1989 to meet the subsistence needs which they and their mother had (as they were destitute) while the Secretary of State for the Home Department was considering whether or not they and their mother should be granted leave to remain in this country. The Judge concluded that it would be unlawful for the Council to apply its NRPF Policy as it stands, or to treat the standard rates of payment which it contains as appropriate to meet the normal subsistence needs of a family, in any reconsideration of the Claimants' case without first reconsidering what standard rates would provide an appropriate level of financial support to meet the normal subsistence needs of destitute families.
- 3.4 In *U and U, R (on the application of) v Milton Keynes Council* [2017] EWHC 3050 Judge Markus QC, ruled in favour of BU and her children aged seven and eight. BU and her children are Nigerian and entered the UK as visitors. Their leave to remain has expired and they consequently have no recourse to public funds and no right to work. Milton Keynes made an assessment of needs under section 17 of the Children Act 1989 and decided that the children were not in need, the family was not destitute and therefore it would not provide accommodation. The court held that the Council failed to properly consider an application for help with housing by a family without recourse to public funds.
- 3.5 *R (Clue) v Birmingham CC* [2011] 1 WLR 99, it was held that a local authority may not refuse to provide support and accommodation to an individual with no recourse to public funds who has an outstanding application for leave to remain based on human rights grounds that was not obviously hopeless or abusive.
- 3.6 In the case of *R v LB Newham* [2013] The UKBA, rejecting the mother's application, said that its decision would not breach the Article 3 rights of the claimant or her mother. Based on the UKBA's decision letter, Newham decided to treat the claimant's mother as an asylum seeker and contended that it was thereby prohibited from providing support by s 122(5) of the Immigration and Asylum Act 1999.
- 3.7 The case of *R (ES) v LS Barking and Dagenham* 2013 also concerns a family with no recourse to public funds seeking support under s.17 CA 1989. At the time of the core assessment in this case, the claimant mother and her two-year old son were accommodated and the child was held not to be in need. They became homeless around a month later, and the LA decided to wait and see whether accommodation would be provided by SSHD under s. 4 of NASS 1999, during which time the family sofa-surfed. Later, when s. 4 accommodation was provided, the LA held that as the only need that

had arisen since its core assessment was for accommodation, and as that was now being provided by SSHD, there was no need to reassess.

- 3.8 Nationally the number of families with NRPF presenting and the financial challenge within this area is growing.

#### **4.0 The Policy**

- 4.1 A draft NRPF policy (Appendix 1) has been developed with advice from Adult Services, Legal Services and Commissioning. The Policy outlines how we will assess and support children, young people, families and adults that have no recourse to public funds to ensure the safety and wellbeing of these young people and adults. This will also ensure we are legally compliant.
- 4.2 The Policy outlines the pathway and legal basis for supporting NRPF families and adults. Services provided will be dependent on an assessment and any needs identified. The assessment will evidence if the child is in need or in need of protection under the Children Act 1989.
- 4.3 Recommendations from the recent Serious Case Review are addressed within the Policy.
- 4.4 The current position of recording payments to families is not supported by CareFirst. The upgrade of the Children's Services recording system to Eclipse in April 2018 will ensure that we have a clear way of recording all financial support provided to families and enable regular reporting to Managers.

#### **5.0 Financial support proposal**

- 5.1 Statutory guidance states that the families/adults with NRPF **may** have a right to financial support (accommodation and subsistence payments) from social services to meet the assessed needs of a child (under section 17 of the Children Act 1989) or because of complex health needs (under the Care Act 2014). In these cases, the local authority has a duty to support the accommodation and subsistence costs of residents with NRPF based on assessed need.
- 5.2 Research has indicated local authorities are varied in the financial support they provide to NRPF.
- 5.3 To meet the needs of these families/adults it is proposed we pay the following rates as a minimum:

Weekly rates	
Single Adult	£37.75 (where accommodation with breakfast is included for a single adult the rate will be £21.00)
Lone Parent	£37.75
Couple	£37.75 (per adult)
Per child	£37.75
Nursing money	£5.00 (child under 1 year/ expectant mothers) £3.00 (child 1-3)
Maternity Grant	£150 (first child) £100 (each subsequent child)
Winter clothing allowance	One off payment equivalent to one week's subsistence

\*These are the standard rates which may be altered up or down based on your individual circumstances and based on the individual assessed needs of children.

5.4 In proposing the above rates we have adhered to the following principles:

- We have regard to Section 95 asylum support rates and levels of income support to help the Council to decide what is an appropriate and fair level of support for families and individuals
- The Council provides higher standard levels of payment for single adults and parents with one child than is provided under Section 95
- Guidance on standard rates allows the Council to ensure that its rates are fair for all and to allow caseworkers to efficiently manage their caseload and the resources of the Council – however all rates can be varied at the discretion of the relevant manager on a case by case basis on the request of the customer or via social worker assessment
- All cases supported under Section 17 Children Act are assessed to ensure that the individual needs of the child are met and that the Council is upholding its duty to safeguard and promote the welfare of children.

5.5 The financial support is to cover essential living needs.

5.6 Some variations to minimum financial support will be:

- additional needs
- Where a child has been assessed by a social worker to have additional individual needs necessary to promote their welfare and wellbeing
- Subsistence payments may be lower than the amount above if you are in residential accommodation which provides for the majority of essential living needs
- Subsistence payments will be lower if in receipt of any other income – for example if in receipt of Child Benefit or Child Tax Credit or Personal Independence Payment, this will be deducted from the subsistence payments.
- If care needs are being met through an alternative method in accordance with the Care Act 2014

- 5.7 For the above variations this will be agreed by the Children & Young People's Resource Panel for Children's Services and Head of Community Financial Support in Adult Services and will be based on assessed needs.

## **6.0 Evaluation of alternative options**

- 6.1 The options that have been considered are:

- Option one – continue as we are
- Option two – adopt a different methodology to determine financial support rates
- Option three – to adopt the financial support figures outlined within this paper and endorse the NRPF Policy.

## **7.0 Reasons for decisions**

- 7.1 Continuing without a policy as outlined in option one would place the Council at risk of judicial review and would result in families receiving inconsistent rates of support which would not be right or fair.
- 7.2 The proposed financial support framework is the only approach that reflects Government figures on the minimum amount of money a person with NRPF can live on. The proposed model has been designed around the Governments Asylum Support rate. A financial framework with no legitimate base would place the Council at risk of judicial review.
- 7.3 Having a clear procedure in place that is aligned with a Government support rate minimises the risk of judicial review and will ensure families experience a fair level of support across the City.

## **8.0 Financial Implications**

- 8.1 Current budget for Section 17 (which includes NRPF expenditure) for 2017-2018 is £299,000. The predicted forecast this year is estimated at £970,000 of which £390,000 is projected against NRPF. This gives a potential cost pressure for 2017-2018 of £671,000 across both Section 17 and NRPF.
- 8.2 It is not possible to forecast what the actual cost would be due to the number of different variables. However, in order to try and understand the potential costs from the proposed new weekly rates a review of the current 37 families being supported was undertaken which included the family profile and spend analysis over a five-month period. An annual equivalent spend was then calculated.
- 8.3 It is expected that this will continue to be a budget pressure in 2018-2019. Therefore, growth of £500,000 has been built into the Medium Term Financial Strategy. This expenditure will be closely monitored throughout the financial year.

[NM/11012018/O]

## 9.0 Legal implications

- 9.1 The relevant legislation is Section 17(1) of the Children Act 1989 which states:  
*“(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—*  
*(a) to safeguard and promote the welfare of children within their area who are in need; and*  
*(b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children’s needs.”*
- 9.2 *(3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child’s welfare.*
- 9.3 *(6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash.”*
- 9.4 In the case of *In R (C, T, M and U) v London Borough of Southwark [2016]* the court stated that Section 17 establishes a target duty which creates a discretion in a local authority to decide how to meet a child’s assessed need. The case also provides local authorities with guidance about how to approach determining amounts of financial support to be paid to families. The Court found that each child’s needs are to be individually assessed by reference to the statutory guidance, **Working Together to Safeguard Children 2015** (update 2017)
- 9.5 Local authorities need to also be mindful of the High Court’s findings in *PO v London Borough of Newham [2014]*:
- Child benefit is not designed to meet the subsistence needs of children so it is not rational or lawful to provide payments in line with these amounts.
  - When it is in the child’s best interests for the family to remain together, payments for the parents should be made in addition to those considered appropriate to meet the needs of the children, but are not required to exceed what is necessary to avoid a breach of the parent’s human rights.
  - Failure to make guidance relating to subsistence payments available to those who might be affected by its application is unlawful.
  - Lack of complaint from a family does not mean that the local authority can be satisfied that the payments made appropriately meet the child’s needs.
- 9.6 In determining what subsistence support to pay to a family, local authorities can make reference to the amounts set by another public body, but must be satisfied that what is provided will meet the child’s needs. Using a basic rate as a starting point would be acceptable so long as the local authority can document how that amount has been

reached, and there is evidence in the assessment that the child's needs have been properly considered and the amount provided meets identified needs. It is good practice for the local authority to provide the family with information about their decision-making process and details of how the family can request that payments are reviewed.

9.7 Local Authority duties under The Care Act 2014 also need to be considered if applicable.

9.8 The local authority's Public-Sector Equality duty under the Equality Act 2010 also need to be considered.

In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

[TC/08112017/N]

## **10.0 Equalities implications**

10.1 An equality analysis is in the process of being produced.

## **11.0 Environmental implications**

11.1 There are no environmental implications of the report/policy.

## **12.0 Human resources implications**

12.1 There are already resource implications within CYP Services in terms of additional assessments and Care Plans that are being required as these vulnerable groups are identified.

12.2 A future option being considered is the development of a specialist service for NRPF families, who would develop and provide expertise in assessment, planning and support to these groups.

## **13.0 Corporate Landlord implications**

13.1 There are no corporate landlord implications of the report/policy.

## **14.0 Appendices**

Appendix 1 - No Recourse to Public Funds Policy